

## **REMARKS**

### **Status of the Claims**

Upon entry of the amendment above, claims 1 and 3-21 will be pending, claims 1, 13, 16, 18, and 19 being independent.

### **Summary of the Office Action**

Claims 1 and 5-9 are rejected under 35 USC §102(b) as being anticipated by CRETINON (U.S. Patent No. 6,000,148).

Claims 1-3, 5-9, 16, and 18 are rejected under 35 USC §102(b) as being anticipated by RUDY (U.S. Patent No. 4,506,460).

Claims 4, 10-12, 14-16, and 20 are rejected under 35 USC §103(a) as being unpatentable over RUDY.

Claim 17 is rejected under 35 USC §103(a) as being unpatentable over RUDY in view of LUTHI (U.S. Patent No. 6,199,303).

Claims 13 and 19 are indicated to contain allowable subject matter.

### **Response to the Office Action**

#### **A. Summary of the Amendment**

In the amendment above, Applicant has amended paragraph 0031 of the specification.

Allowable claims 13 and 19 have been amended by being rewritten in independent form. Accordingly, Claims 13, 19, and 20 are believed to be allowable.

In addition, claim 1 has been amended to include the subject matter of dependent claim 2, thereby at least overcoming the rejection based upon CRETINON (claim 2 not being rejected thereover).

Claim 1 has additionally been amended to specify that the first and second reinforcement elements extend beneath the intermediary sole; such limitation has also been presented in claim 21, which depends from independent claim 18.

Lastly, dependent claim 16 has been rewritten in independent form. As explained below, Applicant submits that claim 16, as well as independent claim 18, include (now and previously) a limitation that is not believed to be taught or suggested by the prior art of record, including RUDY.

**B. Withdrawal of Rejection Based Upon CRETINON**

At least for the following reason, Applicant requests that the rejection based upon CRETINON be withdrawn.

Although Applicant respectfully disagrees with the rejection of claim 1 over CRETINON, in the amendment above, Applicant has added the subject matter of claim 2 into independent claim 1. Claim 2 has not been rejected over CRETINON. Accordingly, reconsideration and withdrawal of the rejection of claim 1 and dependent claims 5-9 is requested.

**C. Withdrawal of Rejections Based Upon RUDY**

At least for the following reasons, Applicant requests that the rejection based upon RUDY be withdrawn.

**1. Claims 16 and 18**

Among other limitations, independent claim 18 specifies the “second reinforcement element extending around a rear of said upper and a rear of said bottom assembly, and extending forwardly in the form of medial and lateral returns.”

Additionally, claim 18 calls for “each of said returns of said second reinforcement element extending transversely toward a respective edge of said first reinforcement element, leaving a clearance with said first reinforcement element.”

Similarly, claim 16 includes the limitation of the second reinforcement element encircling a rear end of the upper and extending forwardly in the form of medial and lateral returns, with each of the returns extending transversely toward a respective edge of said first reinforcement element, leaving a clearance with said first reinforcement element.

Applicant submits that RUDY fails to anticipate or render obvious the inventions of claims 16 and 18 at least for the reason that it fails to teach or suggest the aforementioned limitations.

To emphasize this point, Applicant directs attention to the attachment, on which Applicant's Fig. 2, illustrating an example of a part of an article of footwear that is encompassed by Applicant's claims 16 and 18, appears above RUDY's Fig. 6.

In each figure, Applicant has highlighted in yellow that which might be encompassed by the expression "first reinforcement element" and highlighted in orange that which might be encompassed by the expression "second reinforcement element."

Consistent with the aforementioned limitations that appear in claims 16 and 18, Applicant's Fig. 2 shows, with the assistance of a pair of red arrows, ***the returns of the second reinforcement element extending transversely toward a respective edge of said first reinforcement element.***

By contrast, in RUDY's Fig. 6, even the forwardmost ends of the second reinforcement element cannot be said to extend ***transversely toward*** a respective edge of the first reinforcement element.

At least for these reasons, reconsideration and withdrawal of the rejection of claims 16 and 18 is kindly requested.

## **2. Claim 17**

Claim 17 depends from claim 16 and should be found allowable at least for the reasons that claim 16 should be allowed.

In addition, claim 17 includes subject matter that appears in allowable claim 19 and should additionally found to be allowable for that reason.

In this regard, Applicant submits that LAHTI fails to teach or suggest how RUDY's shoe could/should be amended such that the second reinforcement element extends transversely toward edges of the first reinforcement element.

### **3. Claim 20**

Claim 20 depends from allowable claim 19 and should be found allowable at least for that reason.

### **4. Claims 1 and 21**

Independent claim 1 has been amended to specify the first reinforcement element and the second reinforcement element as "***extending beneath***" the intermediary sole. Claim 21, which depends from independent claim 18, includes the same limitation.

With reference again to the attachment, one can see that the first and second reinforcement elements of RUDY are on ***top of***, not beneath, the layer 45 and, further, Applicant submit that there would have been no reason to have modified the shoe of RUDY to reverse the construction. Accordingly, allowance of claims 1 and 21 are kindly requested.

### **D. Information Disclosure Statement**

Regarding the amendment made to claim 1, Applicant has attached hereto a single reference, viz., U.S. Patent No. 6,079,125, which is also listed on form PTO/SB/09A, to show, generally, that placing a foam layer on top of a reinforcement layer is not *per se* new. However, Applicant submits, there would have been no reason to have modified the structure of RUDY's shoe in a way that would have resulted in Applicant's claimed invention.

**SUMMARY AND CONCLUSION**

The grounds of rejection advanced in the Office action have been addressed and are believed to be overcome. Accordingly, reconsideration and allowance are respectfully requested.

Neither a fee nor an extension of time is believed to be due at this time. However, the Commissioner is authorized to charge any fee required for acceptance of this reply as timely and complete to Deposit Account No. 19-0089.

If it were to be found that an extension of time were necessary to render this reply timely and/or complete, Applicant requests an extension of time under 37 CFR §1.136(a) in the necessary increment(s) of month(s) to render this reply timely and/or complete and the Commissioner is authorized to charge any necessary extension of time fee under 37 CFR §1.17 to Deposit Account No. 19-0089.

Any comments or questions concerning this application can be directed to the undersigned at the telephone or fax number given below.

Respectfully submitted,  
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Attachments: Annotated Copy of Applicant's Fig. 2 and RUDY's Fig. 6  
Form PTO/SB/08A